



Royal United Services Institute
for Defence and Security Studies

Occasional Paper
On Tap Europe Series No. 2

On Tap Europe

Organised Crime and Illicit Trade in Spain:
Country Report

Clare Ellis



About the On Tap Europe Series

According to Europol, commodity counterfeiting and illicit trade in substandard goods are major emerging criminal activities in the EU. The low risks and high profitability associated with illicit trade increasingly attract organised crime groups and the number of counterfeit products seized by law enforcement agencies across Europe continues to grow. The eighteen-month On Tap Europe study provides a comparative analysis of the role of organised crime in the illicit trade of tobacco, alcohol and pharmaceuticals across the EU, gathering evidence from a number of member states.

The six-part series explores the scale, methods and routes of these organised criminal networks, and identifies best practice in policy and law enforcement responses. The final report examines how these issues affect Europe as a whole; it features a series of recommendations for the European Commission, its agencies and EU member states. This paper is the second in a series of five country-level reports and focuses on Spain.

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Organised Crime and Illicit Trade in Spain: Country Report

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Occasional Paper, January 2017



Royal United Services Institute
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Published in 2017 by the Royal United Services Institute for Defence and Security Studies.



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RUSI Occasional Paper, January 2017. ISSN 2397-0286 (Online)

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RUSI is a registered charity (No. 210639)

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Acknowledgements

The author is very grateful to the subject matter experts in Spain and Gibraltar who gave up their valuable time to support this study, particularly those from law enforcement, customs and other public bodies. The author would also like to thank all the members of the On Tap Europe project advisory board for their guidance and feedback.

Finally, thank you to RUSI colleagues, past and present, Calum Jeffray, Charlie Edwards, Andrew Glazzard, Joseph Millis, Edward Mortimer and Charlie de Rivaz.

Preface

SITTING IN A car near Gibraltar's border with Spain, it is not difficult to find evidence of organised crime. In the early afternoon there is a constant stream of people crossing the border, on foot, with bicycles, or in a range of vehicles; the traffic is considerable and unrelenting. According to official statistics, almost 10 million people crossed the land border in 2014;¹ with a permanent population of only 33,000,² that is approximately 295 people for every resident.

A minority of those on foot break away as they enter Spain and tread a seemingly familiar path towards the car park of a fast-food restaurant. To the casual observer, the waiting group of middle-aged men are simply old friends passing the time; however, as they are given packages by each passer-by, it soon becomes clear that they are collecting smuggled cigarettes. An adolescent on a bicycle waits nearby with a slowly filling backpack, ready to transport the goods to the next link in this simple but well-organised supply chain.

This pedestrian smuggling is blatant; so too are its effects. In Andalusia, the Spanish region bordering Gibraltar, a staggering 42% of tobacco products are estimated to be illicit.³ Yet, watching the smugglers hand over their individual cartons of cigarettes, it becomes apparent that they alone cannot account for the vast volumes of illicit tobacco circulating in this region, let alone in the rest of the country. This source of illicit tobacco frequently attracts attention due to its overt nature; however, it is a fallacy to assume that visibility is an accurate measure of scale or significance.

Less than 30 km away lies the Spanish port of Algeciras. It is one of Europe's busiest container docks: in 2015 nearly 3 million containers passed through the port, and it handled more than 62 million tonnes of cargo.⁴ A single container concealing illicit goods can hold 10 million cigarettes, the equivalent of 50,000 cartons. To put this into perspective, pedestrian smugglers generally transport two or three cartons at a time. That smuggling may be concealed among the vast activity at ports is well established; in January 2013 Spanish Customs dismantled an international organised crime group that was importing illicit cigarettes by switching details with

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1. HM Government of Gibraltar, 'Arrivals by Land T.6 Land Frontier Visitor Arrivals', updated 17 November 2016, <https://www.gibraltar.gov.gi/new/images/stories/PDF/statistics/statistics_topic_area/2016/Tourism/Arrivals_by_Land/T.6.pdf>, accessed 28 November 2016.
 2. HM Government of Gibraltar, 'Key Indicators, 2011–2014', <<https://www.gibraltar.gov.gi/new/key-indicators>>, accessed 28 November 2016.
 3. KPMG, 'Project Sun: A Study of the Illicit Cigarette Market in the European Union, Norway and Switzerland: 2014 Results', May 2015, p. 242.
 4. Algeciras Port, 'Periodo Solicitado: de January a December de 2015, comparado con el mismo periodo de 2014' ['Time frame requested: from January to December 2015, compared with the same time frame from 2014'], <<http://www.apba.es/en/stats>>, accessed 8 December 2016.

other containers: 1.4 million packs of cigarettes were seized.⁵ This problem is not restricted to Algeciras: between 2010 and 2013, 200 million cigarettes were seized in containers across Spain.⁶

Visiting the port of Algeciras, there is no immediate evidence of organised crime activity and no obvious collection of illicit goods. In contrast to the pedestrians crossing the Gibraltar border, the smuggling here remains carefully hidden; but its impact in Andalusia, and across Spain, is much harder to conceal.

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5. Agencia Tributaria [Tax Agency], 'La Agencia Tributaria Desmantela una Trama Internacional de Contrabando Tras la Aprehensión de 1,4 millones de Cajetillas de Tabaco' ['The Tax Agency Dismantles an International Smuggling Plot Following the Seizure of 1.4 million Packs of Tobacco'], 26 December 2013.
 6. Transcrime, *European Outlook on the Illicit Trade in Tobacco Products* (Trento: Transcrime and Università degli Studi di Trento, 2015), p. 261.

Executive Summary

THIS IS THE second in a series of five country-level papers on the role of organised crime groups (OCGs) in the illicit trade of tobacco, alcohol and pharmaceuticals across Europe, focusing on Spain as a case study.

The criminal networks behind Spain's illicit trade are sophisticated, quick to adapt and often active in other areas of criminality. In contrast to other countries studied, no evidence was found of a decisive shift away from the established high-risk activities of organised crime (such as trafficking narcotics) towards illicit trade, which is considered comparatively low-risk both in terms of detection and potential sanctions.

Instead, the flexibility of OCGs in Spain includes both forms of activity, with groups moving between different commodities within illicit trade and between crime types. They are quick to recognise and respond to market conditions, moving between product types as opportunities arise, using the same routes, smuggling methods and distribution channels. Spanish OCGs were also found to be working in collaboration with networks overseas, further increasing the expertise and experience upon which they can draw.

The involvement of OCGs in the illicit tobacco trade comprises two relatively distinct approaches: first, OCGs in Spain smuggle contraband and counterfeit products into the country, some of which is destined for the domestic market, and some of which is in transit, destined for other countries; and second, an emerging trend identified in this paper, OCGs are involved in manufacturing in illegal factories, using both raw tobacco produced in Spain and that purchased overseas.

Similarly, there are two principal ways in which OCGs are involved in the illicit alcohol trade: first, they smuggle genuine products without paying the required excise duty or VAT; second, they produce illicit or counterfeit alcohol products, often using denatured ethyl alcohol that was not intended for human consumption.

With regard to the illicit pharmaceutical trade, OCGs are understood to exploit the parallel trade system and divert genuine products intended for the Spanish market towards more lucrative markets elsewhere in Europe. There is also evidence of OCGs manufacturing illicit and counterfeit products in unlicensed, and often crude, laboratories.

It is difficult to make comparisons about the scale of the threat in relation to the smuggling of different products or the use of different criminal methods due to inconsistencies in the information available. For example, the amount and the quality of the data available on illicit tobacco greatly exceed that on illicit alcohol or pharmaceuticals, and there is a similar inconsistency in the information available in relation to different entry points and smuggling

routes into Spain. This makes trend analysis more challenging and potentially hampers effective prioritisation of law enforcement activity.

Overall, Spain acts as a source country, transit hub and destination market for different products in the illicit trade. This paper identifies four specific drivers that underpin this complex and evolving role.

The first is price differentials, which create the opportunity for substantial profits from smuggled tobacco products. The low price of tobacco available across land borders with Gibraltar and Andorra, and in the autonomous community of the Canary Islands, in part drives Spain's role as a destination market. Similarly, the existence of nearby European countries with even higher prices drives its position as a transit country, with many products subsequently transported onwards to more lucrative markets such as France and the UK.

The second driver is the Spanish economy and, specifically, the impact of the global financial crisis. The effects in Spain were extensive and widespread. Reduced income increases demand for cheaper alternatives to, for example, relatively expensive cigarettes and alcoholic drinks. At the same time, pervasive unemployment can increase the risk of people being drawn into criminal activities.

This is linked to the third driver: social acceptance. In many cases, activities relating to illicit trade are not seen as a crime in Spain and links to organised crime are rarely considered. This substantially lowers the psychological barriers for entry into illicit trade, removing the social stigma that is attached to other areas of criminality. Moreover, it increases the size of the market, with more people willing to purchase through such routes.

Finally, the fourth driver is the relatively lenient sanctions against those convicted of crimes relating to illicit trade. While the law in Spain appears to recognise illicit trade as serious criminal activity, relatively low penalties are often applied. This contributes to the popular perception that illicit trade is not considered a serious crime. Moreover, the lower penalties reduce the associated risk which, when considered against the significant profits available, therefore fails to deter either new entrants or repeat offenders.

It is the combination of these factors that has simultaneously created demand for illicit products, fuelled their supply, and offered limited deterrence for participation in this form of criminality.

Key Findings

1. Inconsistencies in the amount and depth of information available in relation to different products and smuggling methods make it difficult to assess the comparative scale of the threat, with data availability influencing, and potentially distorting, perceptions of the threat landscape. This makes trend analysis more challenging and potentially hampers effective prioritisation of law enforcement activity.

2. OCGs are quick to recognise and respond to market conditions, moving between product types as opportunities arise, while using the same routes, smuggling methods and distribution channels. Their activities are also not restricted to illicit trade, often encompassing other forms of criminality, such as trafficking narcotics. The networked nature of larger groups means they have the flexibility to remain active in multiple crime types simultaneously, moving between them with relative ease. There is little evidence of a distinct shift away from the established high-risk activities of organised crime and towards illicit trade.
3. The role of OCGs in illicit trade is clearly acknowledged by Spanish authorities and, as such, it is prioritised alongside other serious criminality and authorities take a proactive approach in response. However, while law enforcement agencies have demonstrated successes in disrupting the networks involved, the current application and enforcement of criminal penalties do not provide an effective deterrent, especially when considered against the potential profits available. There is therefore a level of persistence among those involved, with individuals and OCGs frequently returning to their activities following prosecution or civil action, armed with greater knowledge of law enforcement methods and capabilities.
4. There is a high degree of social acceptance for illicit trade within Spain. People are often quick to excuse involvement, believing it to be out of necessity, and blaming limited employment opportunities following the economic crisis. This eliminates the social stigma that is attached to other forms of criminality, removing a key psychological barrier to involvement in this particular crime.
5. Tight regulation of the tobacco and pharmaceutical markets provides strong protection of the legal supply chain, which is rarely infiltrated by illicit goods. However, such measures cannot prevent the supply of goods through illegal channels, effectively displacing rather than preventing illicit trade. While sale by vendors on the street remains popular, illicit goods are increasingly being sold through websites and on social media, and sale from private homes is an emerging trend.

Introduction

THE NATURE OF organised crime in Europe is changing. A number of strategic assessments have identified significant trends in both the structure of organised crime groups (OCGs) and the criminal activities they undertake. OCGs are becoming more networked and often operate across multiple jurisdictions, with a rise in economic and relatively lower-risk crimes whose harm is more difficult to demonstrate. According to Europol,¹ commodity counterfeiting and illicit trade in substandard goods are major emerging criminal markets in the EU. The *Serious and Organised Crime Threat Assessment* of 2013 notes that the low risks and high profitability of illicit trade increasingly attract OCGs, and the number of counterfeit products seized by law enforcement agencies continues to increase. OCGs are often known for their previous activity in other crime areas and are involved in more than one crime type, cooperating with counterparts in other countries. As a result, the assessment concludes, the distribution and production, as well as the increasing demand and consumption, of illicit goods pose a serious threat to EU citizens.

Building on its UK-based research, RUSI is undertaking a comparative analysis of the role of organised crime in the illicit trade of tobacco, alcohol and pharmaceuticals across the EU. The On Tap Europe project is gathering evidence from five EU member states to assess the scale, methods and routes of OCGs involved in illicit trade. The project aims to demonstrate the impact of organised crime activity across source countries, transit hubs and destination markets. The research assesses how illicit trade is viewed and prioritised in different countries, looking at the scale and scope of the threat and the approaches of governments and law enforcement agencies to tackle the problem. In particular, the objectives of On Tap Europe are to:

- illustrate the routes and methods adopted by organised criminals in their counterfeiting and smuggling operations (identifying notable 'hubs' and trends).
- assess how the scale and impact of illicit trade varies across European countries to determine how extensive it is across the region.
- explore the role of common enablers and facilitators of illicit trade, such as postal, fast parcel and internet-based services.
- identify best practice in law enforcement responses, cooperation and information sharing, helping the public and private sectors to identify common strategies for tackling illicit trade.
- look to understand the dynamics of both organised criminal groups and law enforcement agencies in multiple countries in order to inform the EU's response to illicit trade as a whole.

The final report will examine these issues at the European level and feature a series of recommendations for the European Commission, its agencies and member states. This is

1. Europol, *SOCTA 2013: EU Serious and Organised Crime Threat Assessment* (The Hague: European Police Office, 2013).

the second in a series of five country-level reports, focusing on Spain as a case study. Long exploited as an entry route to Europe for cocaine from Latin America and cannabis from the Middle East, Spain's attractive geographic position has fostered a large and active organised crime community with extensive international links. As OCGs have recognised the high profits available through illicit trade (with comparatively limited risk), Spain has similarly been exploited as a transit country for illicit tobacco and pharmaceutical products en route to more lucrative markets. However, with Spanish citizens heavily affected by the global economic crisis, Spain itself has emerged as a destination market for cheap illicit tobacco in recent years. There is now growing evidence that it is also becoming a source country, with illegal factories for tobacco and pharmaceutical products being uncovered.

The research for the Spain case study was split into three phases. The first consisted of a review of the existing academic literature, government policy documents, law enforcement strategies and private sector reports on organised crime and illicit trade in Spain. In the second phase, a team of RUSI researchers spent one week conducting fieldwork, combining operational research in southern Spain with a series of semi-structured interviews with experts from law enforcement, industry and academia in Madrid and Gibraltar. The final phase involved a half-day workshop in Madrid, gathering together representatives from Spanish law enforcement agencies and research institutes, as well as the tobacco, alcohol and pharmaceutical industries. This allowed the researchers to validate their findings from the first two phases and to generate an informed discussion on likely future trends and policy implications.

The paper consists of five chapters. Chapter I provides an overview of organised crime and the context for illicit trade in Spain. Chapter II assesses the scale and scope of the illicit trade in tobacco, alcohol and pharmaceuticals. It examines existing estimates of scale and identifies some of the main activities involved in relation to each commodity. Chapter III focuses on the OCGs behind the illicit trade, including common routes and methods used. Chapter IV considers how law enforcement agencies have approached illicit trade to date, while Chapter V brings together the primary themes and provides an overview of the report's key findings.

I. Organised Crime in Spain

ORGANISED CRIME HAS long been a priority for Spanish law enforcement. The Iberian Peninsula is recognised as an important entry point for drug smuggling into the EU, with Spain's geographic position making it a key transit route for cocaine from South America.¹ Its proximity to North Africa makes it similarly attractive for cannabis trafficking,² with smugglers needing to traverse only a few miles of open sea, travelling in fast ribs from Morocco and unloading at various points along Spain's extensive coastline. In 2015, 28% of Spanish OCGs were involved in cocaine trafficking (down marginally from 31% in 2013), while 21% were active in smuggling cannabis; cocaine and cannabis smuggling have consistently been the most prevalent activities of Spanish OCGs in recent years.³

These official statistics are released in an annual report from the Ministry for Home Affairs (Ministerio del Interior), summarising both OCG activity and the work of law enforcement in response. The definition of organised crime used by the ministry mirrors that of Europol:⁴ a collaboration of three or more persons which is active for a prolonged period of time and commits serious criminal offences with the objective of pursuing profit. However, in 2015, Europol acknowledged the limitations of this definition, conceding that 'defining organised crime is increasingly difficult' and that this conceptualisation of organised crime 'does not adequately describe the complex and flexible nature of modern organised crime networks'.⁵ Spain's official statistics may therefore omit emerging elements of organised crime activity that fall outside its more traditional and rigid definition.

Nevertheless, valuable insights may still be gained through these reports. In 2015, 445 active OCGs were detected by law enforcement; only 19% were comprised exclusively of Spanish

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1. L Castro Moral and O J Jiménez, 'La Criminalidad Organizada en la Unión Europea: Estado de Cuestión y Respuestas Institucionale' ['Organised crime in the European Union: The State of the Issue and Institutional Responses'], *CIDOB d'Afers Internacionals [CIDOB - Barcelona Centre for International Affairs]* (No. 91, September–October 2010); Europol, *SOCTA 2013*; Ernesto U Savona and Michele Riccardi (eds), *From Illegal Markets to Legitimate Businesses: the Portfolio of Organised Crime in Europe*, Final Report of Project OCP – Organised Crime Portfolio (Trento: Transcrime and Università degli Studi di Trento, 2015).
 2. Andrea Giménez-Salinas Framis, 'La Delincuencia Organizada en Europa: Extensión, Factores Facilitadores y Rasgos Principales' ['Organised Crime in Europe: Scope, Enabling Factors and Main Features'], in *La Lucha Contra el Crimen Organizado en la Unión Europea [The Fight Against Organised Crime in the European Union]* (Spain: Ministerio de Defensa, 2012), pp. 11–33; Europol, *SOCTA 2013*, p. 21.
 3. Ministerio del Interior [Ministry for Home Affairs], 'Balance 2015 – Lucha Contra el Crimen Organizado la Corrupción y el Fraude en España' ['2015 Assessment – The Fight against Organised Crime, Corruption and Fraud in Spain'], February 2016.
 4. Europol, *SOCTA 2013*, p. 42.
 5. Europol, *Exploring Tomorrow's Organised Crime* (The Hague: European Police Office, 2015), p. 11.

citizens and the activities of 65% extended beyond Spanish borders.⁶ This highlights the international nature of organised crime activity in Spain, a finding repeatedly reiterated during fieldwork interviews. Within Spain, OCGs are concentrated around major urban centres and ports, with a comparatively limited footprint in more rural areas.⁷

Law enforcement officials also echoed Europol's analysis regarding the influence of market forces on OCG activity. A 2015 Europol report suggested that the expansion of internet services, the globalisation of supply chains and the increase in economic crimes have had a significant effect on the activities of OCGs. As a result, 'OCGs operate in a criminal economy dictated by the laws of supply and demand and are favoured by social tolerance for certain types of crime such as the trade in counterfeit goods'.⁸ Spanish officials noted this behaviour among OCGs operating on their territory, with groups trafficking different commodities in response to market opportunities.

While some smaller OCGs have shown evidence of moving between commodities over time, officials also underlined the networked nature of larger groups that remain active in multiple crime types simultaneously. In effect, they operate as distinct smaller groups, each focusing on a single crime type, with the network's senior personnel providing oversight and coordination. This networked approach ensures that the OCGs can still benefit from the expertise of their members in relation to specific crimes, while capitalising on established transit routes and methods to facilitate multiple areas of activity. The parallels with legitimate business practice are evident, with activity driven by market demand and the largest groups diversifying to exploit various opportunities.

Responsibility for combating their activities is shared by the National Police (Cuerpo Nacional de Policía), the Civil Guard (Guardia Civil), and the Customs Surveillance Directorate (Dirección Adjunta de Vigilancia Aduanera), part of the Tax Agency (Agencia Tributaria). The National Police is a civilian organisation, operating principally in urban areas and with a responsibility for a range of relevant crimes including drug trafficking and money laundering. The Civil Guard, on the other hand, is a military body with responsibility for Spain's rural areas, national borders and coastal waters. It works closely with Spanish Customs with particular responsibility for the detection and investigation of smuggling activity.

There is therefore considerable overlap between the exercise of these functions, and all three bodies routinely conduct investigations linked to organised crime. The Intelligence Centre against Terrorism and Organised Crime (Centro de Inteligencia contra el Terrorismo y el Crimen Organizado, CITCO) acts as a coordinating body that aims to analyse shared intelligence, deconflict investigations and ensure cooperation.

The success of CITCO in attaining its objectives has perhaps not yet been proved. However, despite lingering questions over interagency cooperation, Spanish law enforcement has

6. Ministry for Home Affairs, 'Balance 2015'.

7. Ministry for Home Affairs, 'Balance 2015', p. 11.

8. Europol, *Exploring Tomorrow's Organised Crime*.

documented a number of successes in the fight against organised crime. In 2015, 445 OCGs were detected, with 274 subsequently being considered ‘completely dismantled’ and a further 158 at least partly disrupted. In total, 18,463 people were investigated in relation to possible organised crime activity.⁹

With regard to illicit trade, agencies demonstrate a detailed intelligence picture and understanding of the nature of the threat, including the role of organised crime. Information relating to seizures, investigations and prosecutions is routinely collected and analysed and internal strategy documents are developed and reviewed. However, while this information provides valuable insight into the methods of OCGs, as will be discussed in Chapter II, it offers only limited insight into the scale of the threat, reflecting law enforcement activity rather than that of OCGs, and offering no insight into the volumes evading controls.

In relation to the illicit pharmaceutical trade, these agencies are further supported by Spain’s pharmaceutical regulator, the Spanish Agency of Medicines and Health Products (Agencia Española de Medicamentos y Productos Sanitarios, or AEMPS). AEMPS has no direct law enforcement function, but shares intelligence with the other agencies and offers technical support by providing pharmaceutical expertise in investigations and prosecutions.

Similarly, within the the Spanish Agency for Consumer Affairs, Food Safety and Nutrition (Agencia Española de Consumo, Seguridad Alimentaria y Nutrición), the laboratories of the Quality Control and Research Centre (Centro de Investigación y Control de la Calidad) analyse alcohol products to detect counterfeit goods within the Spanish market, and identify the harmful use of methyl alcohol.

The inclusion of organised crime as one of twelve identified risks and threats within Spain’s National Security Strategy underlines the significance attached to tackling the activity of OCGs.¹⁰ This was reflected in discussions with law enforcement officials, who cited it as a priority, and considered illicit trade to be an important aspect of the threat. However, despite the importance that officials attached to tackling such trade, evidence suggests that it is not perceived by the broader population to be a significant criminal issue. In 2013, a survey found that 41% of Spaniards did not have a negative opinion on tobacco smuggling.¹¹ As will be discussed in Chapter V, the social acceptability of the illicit trade facilitates the activities of organised crime and undermines the efforts of the authorities in combating illicit trade.

9. Ministry for Home Affairs, ‘Balance 2015’.

10. Presidency of the Government, ‘The National Security Strategy: Sharing a Common Project’, May 2013.

11. ThinkCom.es, ‘Estudio Sobre El Consumo de Tabaco Y Alcohol En España’ [‘Study on Tobacco and Alcohol Consumption in Spain’], October 2013, cited in Francesco Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products 7* (Trento: Transcrime and Università degli Studi di Trento, 2014), p. 86.

II. The Scale and Scope of Illicit Markets

THE RELATIVE SCALE of illicit markets is notoriously difficult to measure, given the covert, cross-border nature of criminal activities, as well as differences in the volume and value of commodities such as tobacco, alcohol and pharmaceuticals. Moreover, measurements typically draw either on seizure data or estimations of the volume circulating for sale. While useful, both measures offer only limited insight. The former partly reflects law enforcement and customs activity; an increase in seizures does not necessarily indicate a growth in the scale of illicit trade, and can tell us nothing, by itself, about the volumes evading control. The latter – estimations of the volume circulating for sale – measures only the size of the destination market, offering no insight into illicit trade originating in, or transiting through, a country. As a result, estimations of the size of the illicit market in Spain may not represent the full extent of such trade activities in the country.

Disparities in the quantity and type of information available for different products add further challenges; the data regarding illicit tobacco, both in terms of volume and detail, greatly exceed those for illicit alcohol and pharmaceuticals.

The inconsistency in the amount of information available also extends beyond product types: a similar inconsistency exists with regard to different entry points into the country. For example, there is considerable information available regarding illicit tobacco entering mainland Spain from Andorra, Gibraltar and the Canary Islands, but comparatively little on the amounts being smuggled through major ports such as Algeciras and Valencia. This makes it difficult to assess the comparative scale of the threat from different criminal methods, with data availability influencing, and potentially distorting, perceptions of the threat picture.

Illicit Tobacco

Spain is one of the EU's principal producers of raw tobacco, one of its largest importers of tobacco products, and it has a substantial consumer base. As such, the country has traditionally been a significant element within the European tobacco market.¹ However, recent years have seen a marked decline.

Production in Spain fell from 40,171 tonnes of raw tobacco in 2005 to 29,275 in 2011.² There are now signs of a gradual recovery, with production increasing to 32,232 tonnes in 2014;

1. Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products* 7, p. 25.

2. European Commission, Directorate-General for Agriculture and Rural Development, 'Raw Tobacco – Production Statistics – 2014-2003 Harvests', DGAGRI/C.2, last updated 11 December 2015, pp. 4, 17,

however, this is still almost 20% lower than 2005.³ Despite these reductions in output, Spain remains the third-largest producer of raw tobacco in the EU, accounting for 15% of production.⁴ Tobacco cultivation remains highly concentrated in the southern region of Extremadura, which accounted for 93% of Spain's total production in 2011.⁵

Figures compiled by the Commissioner for the Tobacco Market have also revealed a sharp decline in legal sales of tobacco products from 2009 onwards, with sales in 2015 almost half what they were in 2008.⁶

Box 1: Neighbouring Markets.

Neighbouring Markets with substantially cheaper tobacco products have long been a source for the illicit market in mainland Spain. Of particular note are Andorra, Gibraltar and the Canary Islands.

Andorra: a landlocked principality located between France and Spain in the Pyrenees, Andorra is one of the smallest states in Europe.

Gibraltar: an overseas territory of the UK, Gibraltar is located at the southern tip of Spain, with which it shares a land border.

The Canary Islands: an archipelago located off the coast of northwest Africa, the Canary Islands are an autonomous community of Spain with separate tax regulations.

During interviews with local experts from the private sector, a number of different explanations for this trend were suggested. First, mirroring much of Europe, Spain has seen a steady decline in its smoking population in recent years (see Figure 1).⁷ Second, the Spanish economy has been severely affected since the 2008 global financial crisis, resulting in extensive unemployment (see Figure 2) and reductions in disposable income. Between 2007 and 2011, household disposable income fell by approximately 5%, which was one of the largest declines among OECD countries, highlighting the acute impact of the global financial crisis on the Spanish economy and population.⁸

<https://ec.europa.eu/agriculture/sites/agriculture/files/tobacco/statistics/production-statistics_en.pdf> accessed 28 November 2016.

3. *Ibid.*

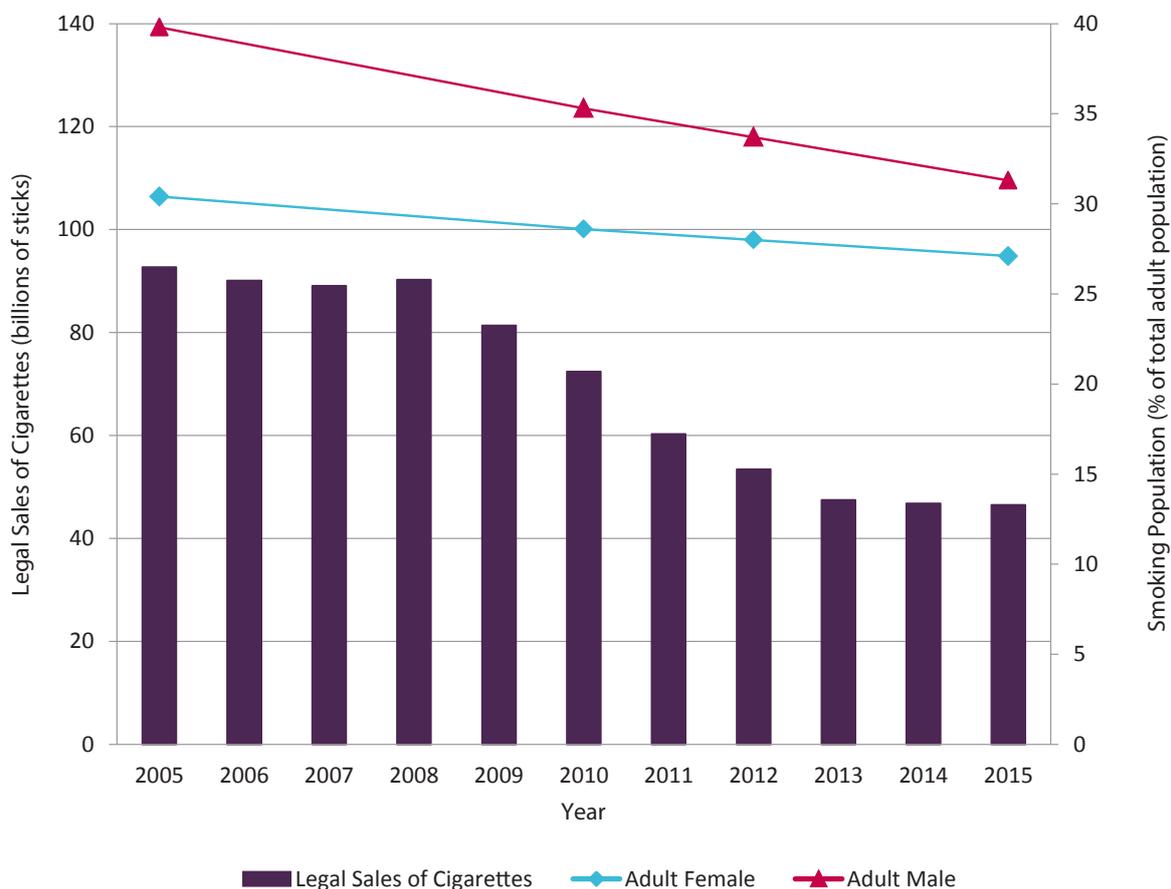
4. *Ibid.*

5. Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products* 7, p. 25.

6. Comisionado para el Mercado de Tabacos [The Commissioner for the Tobacco Market], <<http://www.cmtabacos.es/wwwcmt/paginas/ES/mercadoEstadisticas.tmpl>>, accessed 28 August 2016.

7. World Health Organization, 'Tobacco Use: Data by Country', Global Health Observatory Data Repository, last updated 12 May 2015, <<http://apps.who.int/gho/data/node.main.65>>, accessed 5 December 2016.

8. OECD, 'How's Life? 2013: Measuring Well-being – Country Snapshot Spain', November 2013.

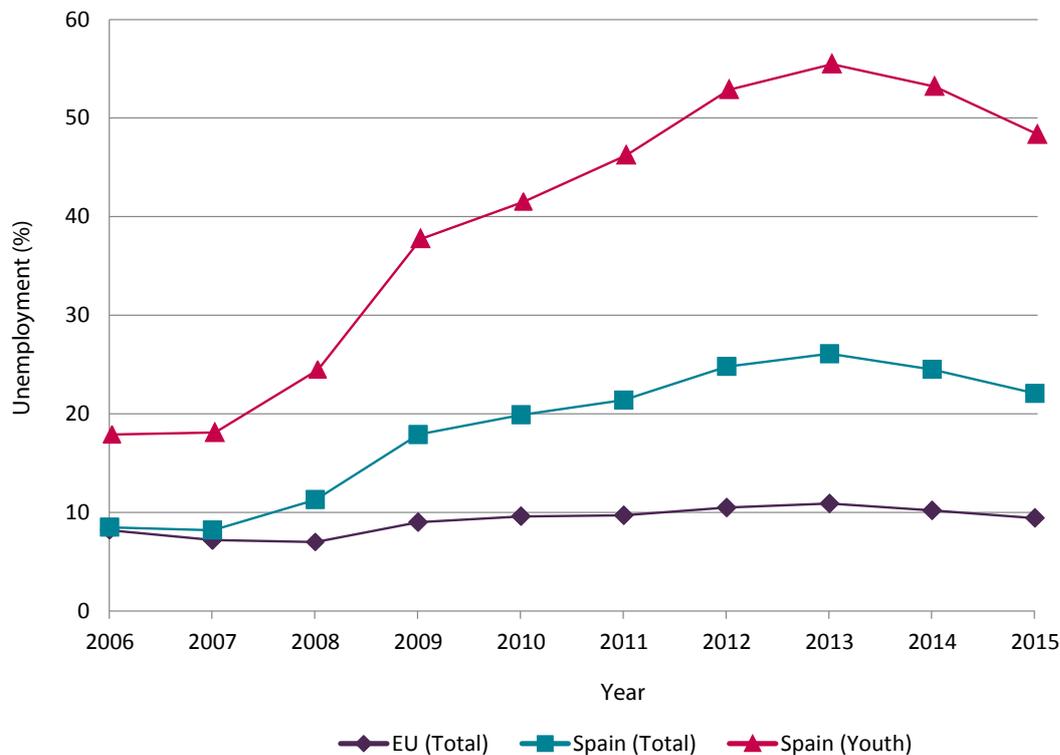
Figure 1: Legal Sales of Cigarettes and Adult Smoking Population in Spain, 2005–15.

Sources: *The Commissioner for the Tobacco Market*; *World Health Organization, Tobacco Use Data*, <<http://www.cmtabacos.es/wwwcmt/paginas/ES/mercadoEstadisticas.tmp>>, accessed 28 August 2016.

It was suggested to the researchers that the impact has pushed consumers towards the illicit market, rather than leading to more substantial falls in the number of smokers. Indeed, Figure 1 does suggest that legal sales have fallen at a faster rate than the smoking population. However, it is difficult to substantiate this assertion, particularly given the challenge of estimating the size of the illicit tobacco market. There are no publicly available official estimates,⁹ although a number of private sector organisations now produce their own assessments, perhaps the most notable of which is the annual Project Sun report prepared by KPMG.¹⁰

9. Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products 7*, p. 11.

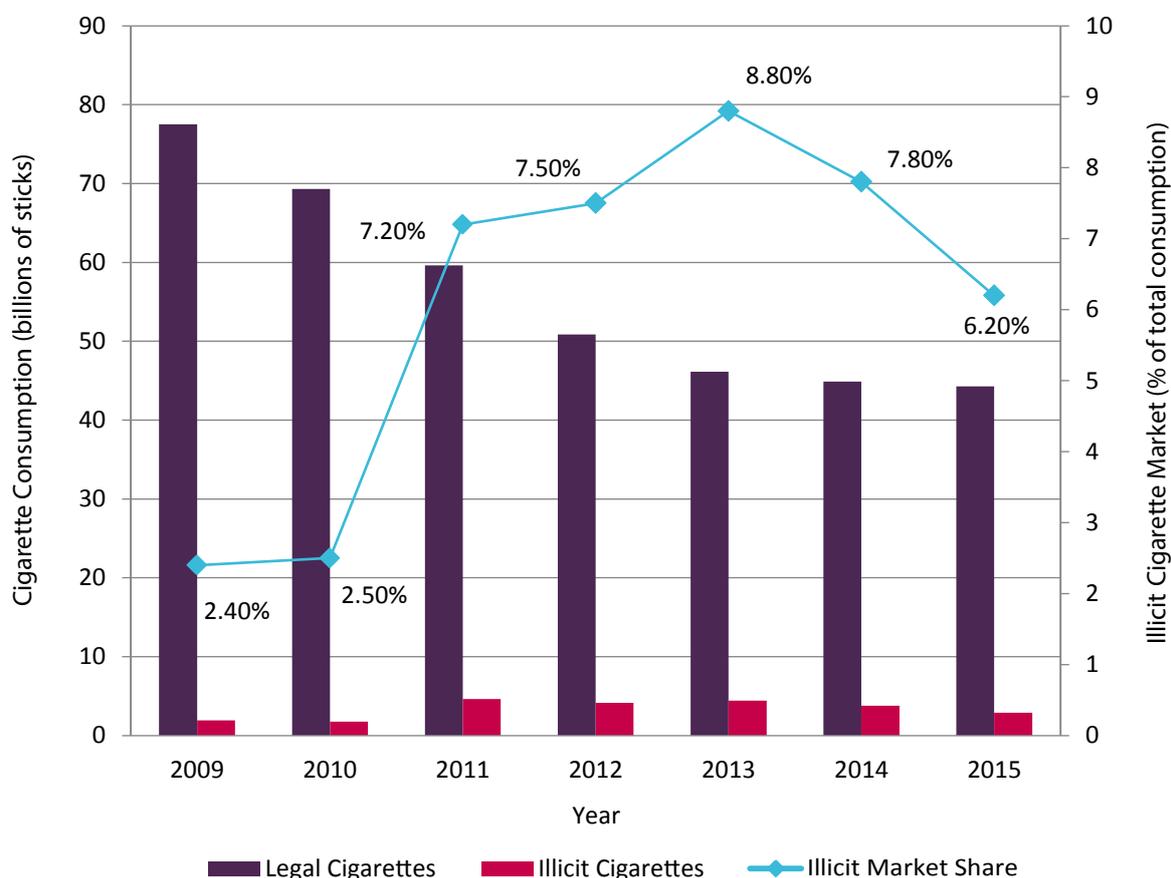
10. KPMG, 'Project Sun: A Study of the Illicit Cigarette Market in the European Union, Norway and Switzerland: 2015 Results', June 2016, p. 126.

Figure 2: Unemployment Rate in Spain, 2006–15.

Source: Eurostat, 'Unemployment Statistics', <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>, accessed 28 September 2016.

Private sector studies primarily use empty-pack surveys as their methodology, which involve collecting discarded empty cigarette packs in order to analyse their authenticity and origin, either in independent or company laboratories. This methodology is not without flaws, however, and its accuracy has been called into question. For example, collection activities are focused in urban areas, therefore providing a somewhat distorted view of the market. It must also be remembered that the surveys do not collect data on loose or hand-rolled tobacco,¹¹ and therefore can produce estimates only of the illicit cigarette market, rather than the illicit tobacco market as a whole. Nevertheless, such surveys are able to provide useful data on trends in illicit cigarettes over time, including the popularity of products and their origin. The reports are also used by Spanish law enforcement agencies alongside their own seizure data.

11. 'Fine-cut', 'loose' or 'roll-your-own' tobacco refers to tobacco that has been cut into small shreds, typically used to make self-made cigarettes by handrolling the tobacco into rolling paper or injecting it into filter tubes.

Figure 3: The Illicit Cigarette Market in Spain as a Percentage of Total Cigarette Consumption, 2009–15.

Source: KPMG, 'Project Sun: 2015 Results', p. 126.

Having been below 3%, the market share of illicit cigarettes in Spain increased sharply from 2011 onwards, reaching a peak of 8.8% in 2013 (see Figure 3). During interviews with representatives from the private sector, this rapid growth was repeatedly linked to the government's decision in December 2010 to increase the tax on tobacco products by 28%.¹² Faced with a worsening economic outlook, this substantial increase was introduced alongside austerity measures as the government sought to reduce the record budget deficit.

However, from 2014, the illicit cigarette market has begun to decline once more, falling to 6.2% in 2015.¹³ This now places it below the regional average of 9.8% across the EU, Switzerland and Norway.¹⁴ Improving economic conditions and increased law enforcement activity were both cited as possible reasons for this recent reduction.

12. BBC News, 'Spain Passes Tobacco Tax Increase', 3 December 2010.

13. KPMG, 'Project Sun: 2015 Results', p. 126.

14. *Ibid.*, p. 7.

While useful in monitoring the overall scale of the illicit market, these aggregate figures obscure a more complex picture. Across Spain, there is vast geographic disparity in the prevalence of illicit tobacco: in 2014, 45% of the tobacco consumed in Extremadura and 42% in Andalusia was estimated to be illicit; this figure remained below 10% in all other regions.¹⁵ Based on these recent trends in the illicit market, as well as existing literature and primary research conducted in the country, it is clear that while Spain has traditionally been a transit country for illicit tobacco,¹⁶ in recent years it has also become a destination market – albeit concentrated within certain regions.

This is perhaps not surprising. As shown in Table 1, there is significant profit to be made by smuggling tobacco into mainland Spain, with substantially lower prices in neighbouring Andorra, Gibraltar and the Canary Islands.

Table 1: Average Prices for a Pack of 20 Cigarettes and Inflow to Mainland Spain in 2015.

Source	Average Price for a Pack of 20 Cigarettes in 2015 (€)	Estimated Inflow to Mainland Spain in 2015 (billion sticks)
Mainland Spain	4.44	N/A
Andorra	2.79	0.70
Gibraltar	2.60*	0.89
Canary Islands	1.97	0.34

Source: KPMG, *Project Sun: 2015 Results*, p. 127.

*2014 data. Taken from Ashifa Kassam, 'EU Calls for Crackdown on Tobacco Smuggling Between Spain and Gibraltar', *The Guardian*, 11 August 2014.

Representatives from the tobacco industry repeatedly highlighted inflow from these sources as a significant element in Spain's illicit market. Indeed, as Table 1 illustrates, substantial amounts of illicit cigarettes are entering through these routes. However, officials interviewed for this paper placed greater emphasis on smuggling from other sources via ports, where up to 10 million cigarettes may be concealed in a single container.

A lack of public data makes direct comparison between these different sources of illicit tobacco impossible, but even a small number of containers evading controls at major ports would surpass that entering the country through the smuggling methods seen at land borders. As discussed in Chapter III, OCGs are known to import illicit tobacco in this way, with a number

15. KPMG, *Project Sun: 2014 Results*, p. 242.

16. A study conducted by Spanish Customs between 1994 and 2002 found that the majority of brands seized in Spain had an extremely limited domestic market, strongly indicating that they were ultimately destined for other markets. See N J Bonilla Panvela, 'Evolución del contrabando de tabaco en España' ['The Evolution of Tobacco Smuggling in Spain'], *Prevención del Tabaquismo [Tobacco Use Prevention]* (Vol. 5, No. 2, April–June 2003), pp. 127–35. See also Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products* 7, p. 76.

of recent investigations highlighting both the sophistication of container smuggling, and the volumes transported. Moreover, it should be noted that if the products are in transit through Spain, they would not be captured by industry's empty-pack surveys.

Despite the growth of Spain's domestic market, much of the illicit tobacco entering the country is still estimated to be in transit and ultimately destined for elsewhere.¹⁷ While the price of cigarettes in Spain may be higher than some of its neighbours, it is still dwarfed by prices in France and the UK, creating a powerful draw towards these high-profit markets (see Table 2).

Table 2: Average Prices for a Pack of 20 Cigarettes and Estimated Outflow from Mainland Spain in 2015.

Destination	Average Price for a Pack of 20 Cigarettes in 2015 (€)	Estimated Outflow from Mainland Spain in 2015 (billion sticks)
Mainland Spain	4.44	N/A
France	6.75	2.70
UK	10.10	0.91
Germany	5.34	0.15

Source: KPMG, 'Project Sun: 2015 Results', p. 127–28.

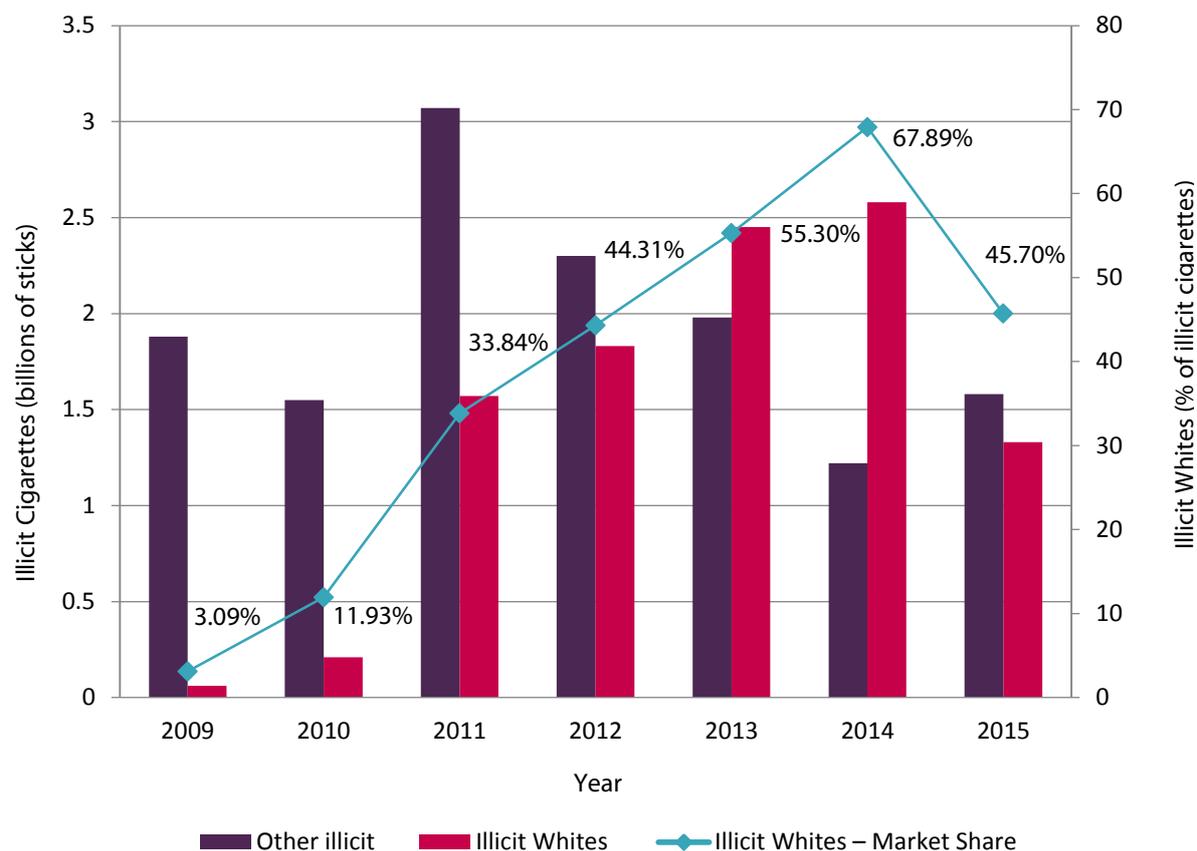
The illegal tobacco market in Spain continues to be dominated by the unlawful importation of 'illicit whites'¹⁸ or genuine brands of cigarettes without the payment of the appropriate duty (see Figure 4 on the next page). However, primary research uncovered some evidence of the unlawful production of counterfeit branded cigarettes and fine-cut tobacco products in illegal factories, a number of which have been identified and closed down by the authorities since 2013. While it is not yet possible to discern a definitive trend, the emergence of such factories is a cause for concern.

There are two implications from this finding. First, it offers evidence of illicit fine-cut tobacco products within Spain, which, given their nature, will not be captured by empty-pack surveys if they enter the domestic market. Second, it positions Spain as an emerging source country, a trend which is discussed in more detail in Chapter III.

17. KPMG, 'Project Sun: 2015 Results', p. 128.

18. 'Illicit whites' or 'cheap whites' are cigarettes which are lawfully produced in one country but manufactured for the purpose of smuggling into countries with higher tax rates where there is no lawful market for them.

Figure 4: Illicit Whites in Spain as a Percentage of Counterfeit and Contraband Cigarette Production, 2009–15.

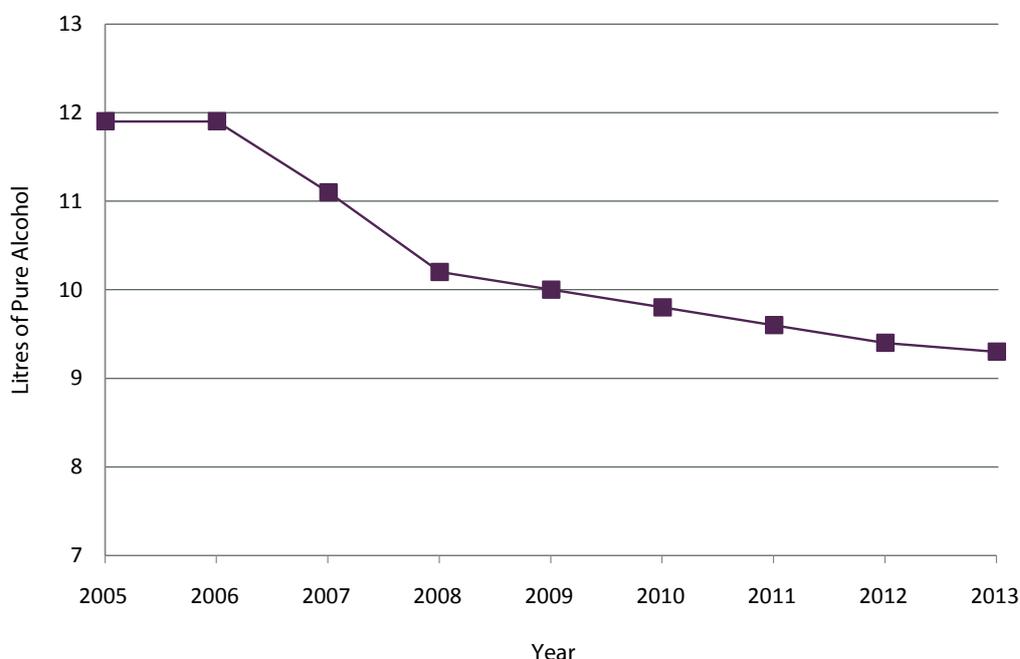


Sources: KPMG, 'Project Sun: 2015 Results', p. 126; KPMG, 'Project Sun: 2014 Results', p. 241.

Illicit Alcohol

As discussed above, the Spanish economy has faced a particularly challenging period following the 2008 financial crisis, with high rates of unemployment and one of the largest reductions in disposable income among OECD countries. Such factors can increase the vulnerability of an economy to the illicit trade. However, with regard to alcohol, this is perhaps offset by the comparatively low prices of legal products. Analysis by Eurostat of 2015 prices found alcoholic beverages to be, on average, cheaper than in the rest of the EU and, perhaps crucially, cheaper than in the countries directly bordering mainland Spain.¹⁹ Indeed, after examining data from the 28 EU member states and three EFTA (European Free Trade Association) countries (Iceland, Norway and Switzerland), it was found that only five countries had lower alcohol prices

19. Eurostat, 'Purchasing Power Parities (PPPs), Price Level Indices and Real Expenditures for ESA 2010 Aggregates', <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=prc_ppp_ind&lang=en>, accessed 21 December 2016.

Figure 5: Legal Alcohol Sales in Spain, 2005–13.

Source: OECD, 'Alcohol Consumption (Indicator)', 2016, <<https://data.oecd.org/healthrisk/alcohol-consumption.htm>>, accessed 20 December 2016.

(Bulgaria, the Czech Republic, Hungary, Romania and Slovakia).²⁰ This would seem to reduce both the potential profit margins in the illicit trade and the incentives for customers to look outside the legal market.

However, it is difficult to test this assumption. In contrast to the considerable data that can be gathered to facilitate estimates of the illicit tobacco trade, there is very little data available regarding illicit alcohol. Only a small number of datasets are available on which to make any assessment. Estimates from different sources vary, and there is no way to indicate fluctuations in the market over time or to examine geographical breakdowns across the country. Nevertheless, an examination of two recent studies provides some valuable insights as to the scale of the illicit trade in Spain.

While legal sales of alcohol have been in steady decline since 2006 (see Figure 5), there are no indications of a growth in Spain's domestic illicit alcohol market. Indeed, according to a 2014 report by the World Health Organization, there has been a slight decline in 'unrecorded' alcohol, which it defines as produced, distributed and sold outside formal channels. These are therefore primarily smuggled products where the duty has not been paid, or illicit production, including industrial alcohol. This figure is not a perfect measure as it also includes alcohol that has been legally produced at home for personal consumption; however, it offers a useful proxy in an area largely devoid of public data. The World Health Organization estimates that between

20. *Ibid.*

2003 and 2005, 11.4% of alcohol consumed in Spain was unrecorded, with this figure falling slightly to 10.7% between 2008 and 2010.²¹

As an alternative measure of the illicit trade, the EU Intellectual Property Office has recently estimated the losses to both industry and the government through counterfeit wine and spirits.²² Between 2008 and 2013, it estimates that the Spanish spirits and wine industries lost an annual average of €263 million as a result of counterfeit products, representing 10.4% of the spirits market and 2.3% of the wine market. This equates to an annual average loss of €90 million in excise duties, the third-highest in Europe, behind only the UK and France.²³

Unfortunately, this measurement also has its limitations; it excludes beer entirely and examines only counterfeited wine and spirits, therefore omitting the excise losses from smuggling genuine products. Furthermore, what is not clear is how much of this loss is due to counterfeit Spanish products sold within the country, or to overseas markets. Similarly, it has not been possible to obtain detailed breakdowns of the sale of illicit alcohol in Spain by either region or product type, so it is not known whether the trade is geographically concentrated in a similar manner to tobacco.

Illicit Pharmaceuticals

Although case studies provide insight into the scope of the illicit pharmaceuticals trade in Spain, virtually no data exist regarding its scale. Similar to the situation in other European countries, a significant obstacle to forming any official estimates is disagreement over definitions of what constitutes 'illicit' and what constitutes a 'pharmaceutical product' or 'medicine'. The principal difficulties resulting from this situation are the challenges in determining whether the threat is increasing or falling, and assessing the impact of interventions and strategic responses.²⁴

Officials were unanimous in their assertion that Spain offered an extremely limited consumer market due to the low price of medicines in the legal supply chain. As a destination market, the illicit trade is therefore restricted to products for which people may be unable, or too embarrassed, to seek a prescription, consisting almost exclusively of lifestyle drugs (principally for muscle gain, weight loss or erectile dysfunction).

However, there is evidence to suggest that Spain is a source country: first, for genuine products being sold through parallel trade in more lucrative markets; and second, for illicit and counterfeit products being manufactured in unlicensed and often crude laboratories. In the latter case, once again the products appear to be principally lifestyle drugs.

21. World Health Organization, *Global Status Report on Alcohol and Health 2014* (Geneva: World Health Organisation), p. 238. For the organisation's definition of 'unrecorded alcohol' see *ibid.*, p. 30.

22. EU Intellectual Property Office, 'The Economic Cost of IPR Infringement in Spirits and Wine', July 2016.

23. *Ibid.*

24. OECD, *Illicit Trade: Converging Criminal Networks* (Paris: OECD Publishing, 2016), p. 81.

III. Organised Crime: Groups, Routes and Methods

OCGs in Spain are professional and methodical, operating with large distribution chains. They are quick to recognise and respond to market conditions, moving between product types as opportunities arise, using the same routes, smuggling methods and distribution channels. While individuals may have expertise in one area, within larger groups more senior members will oversee and direct activity in multiple domains. The research also found evidence of overlaps between the illicit trade and other organised crime activity such as narcotics trafficking, with profits from one area often being used to provide initial finance for other activities until they themselves become profitable – effectively providing ‘start-up capital’.

Organised Crime and Illicit Tobacco

Evidence of organised criminality may be found throughout Spain’s illicit tobacco trade, and the link to organised crime is explicitly recognised in the 2016 Customs strategy.¹ As outlined in Chapter II, there are two relatively distinct issues: first, the smuggling of contraband and counterfeit products into Spain, some of which is in transit, destined for foreign countries, and some of which is destined for the domestic market; and second, the emerging trend of illicit production in hidden factories.

Smuggling of Contraband and Counterfeit Tobacco Products

Both the existing literature and the primary research conducted for this paper highlight the prevalence of smuggling across Spain’s land borders with Andorra and Gibraltar. Some of this activity is conducted on a small scale by individuals, albeit in increasing numbers following the economic crisis.² Individuals and small groups – referred to as *farderos* – carry produce from Andorra over the mountain paths into Spain. Others – often Spanish women referred to as *matuteras* – repeatedly cross the border with Gibraltar on foot, carrying one or two cartons on each occasion.³ People have also been known to throw cartons of cigarettes over the Gibraltar border or simply to run across the beach. Interviews with local officials confirmed that while some of this activity is self-directed, with individuals selling their illicit products directly to consumers, much of it is coordinated by larger OCGs, which collate the produce for distribution across Spain. The case study outlined in Box 2 illustrates the potential scale of activity where there is such OCG involvement.

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1. Ministerio de Hacienda y Administraciones Públicas [Ministry of Finance and Civil Service], ‘Disposición 1836 del Boletín Oficial del Estado’ [‘Provision 1836 of the Official State Bulletin’], Number 46, 23 February 2016, pp. 13,687–13,688.
 2. Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products* 7, p. 66.
 3. *Ibid.*

Box 2: Case Study – Smuggling Tobacco Across Land Borders.

A 2014 operation by the Civil Guard into the handling of stolen goods uncovered links between three OCGs smuggling tobacco:

- The first group was based in Catalonia, buying tobacco in Andorra and smuggling it across the border using four-wheel drives to cross mountain paths. It was initially stored in warehouses, before being distributed across Spain. Twenty-three people within this OCG were identified and arrested; most were Spanish nationals, but the group also included Bulgarians, Andorrans, Portuguese and Romanians.
- The second group was the most economically powerful, purchasing large amounts of tobacco and storing it in warehouses in western Spain. Six people were arrested, all of them Spanish nationals.
- The third group delivered tobacco to provinces across Spain for distribution to the general public. Twenty-two people were arrested, all from Spain, with the exception of one Portuguese national.

These OCGs were distinct, trading with one another as partners in business. Whether transporting tobacco across borders or within Spain, the journeys were largely conducted at night. When travelling within Spain, the OCGs used 'clean' cars to travel ahead of the illicit goods, testing routes to uncover any police checkpoints.

During the operation, more than 5 million illicit cigarettes were seized with a value exceeding €1 million, in addition to €150,000 in cash and 21 different vehicles. The Civil Guard also discovered that the same network and distribution links were being used for other illicit goods; they seized 15 tonnes of counterfeit clothing and uncovered a small marijuana factory.

Source: Information provided to the author by the Civil Guard.

Counterfeit tobacco products and illicit whites are both known to be smuggled through the ports of Valencia, Barcelona, Algeciras and Bilbao, either for entry into the Spanish market or transiting onwards to more lucrative destinations. Containers transiting Spanish ports principally originate in China and are ultimately destined for the UK and Ireland.⁵ Those carrying products destined for the Spanish market may similarly originate in China; alternatively, large volumes are also seen from Malaysia, while containers from Greece arrive via Italy.⁶

OCGs use two principal methods to smuggle counterfeit tobacco products and illicit whites through ports. The first is to conceal the illicit tobacco products among legal, declared products, as illustrated by the case study in Box 3. In this scenario, the products are unlikely to be uncovered through cursory visual inspection by the authorities, but remain vulnerable to scanning equipment or a thorough search.

4. KPMG, 'Project Sun: 2015 Results', p. 128.

5. Transcrime, *European Outlook on the Illicit Trade in Tobacco Products* (Trento: Transcrime and Università degli Studi di Trento, 2015), p. 261.

6. *Ibid.*

The second method employed by OCGs is to transport two containers, one with legal, low-value goods, the second containing illicit tobacco products. The identifying numbers for the containers are switched partway through transport, enabling the contraband to arrive in port under papers declaring legal goods. Operation *Trileros*, detailed in Box 4, provides a clear example of this technique in practice.

Box 3: Case Study – Concealing Illicit Products among Legal Declared Goods.

Following the disruption of an OCG network that had transported 4.5 million packs of cigarette to Ireland via the port of Bilbao, increased controls on containers transiting this route were instigated by the authorities.

Ensuing operations led to the seizure of 650,000 packs of cigarettes, with a value in excess of €2.6 million. The containers had been declared as transporting construction materials, with the illicit tobacco concealed within insulating materials in case of inspection. However, the use of scanning equipment revealed the additional cargo.

Source: Agencia Tributaria [Tax Agency], 'The Tax Agency Uncovers a Cigarette-Smuggling Route Through the Bilbao Port Bound for Ireland', 26 March 2013.

Box 4: Case Study – Operation *Trileros*, Switching Papers Before Arrival.

In November 2012, customs uncovered a plot to exchange the numbering and destination of two containers in order to smuggle illicit goods through the port of Algeciras. One container was transporting legal, low-value goods destined for Portugal, while illicit cigarettes were concealed within the other, destined for Gambia. Once the identifying markers of the containers had been switched, the cigarettes reached Portugal, declared to the authorities as equestrian equipment. However, alerted by their Spanish counterparts, the Portuguese authorities searched the container and seized more than 460,000 packets of cigarettes.

In November 2013, a second attempt was made to smuggle tobacco using this technique; the container of illicit tobacco was to be switched with one whose papers declared it to be transporting equestrian equipment, but in reality it contained low-value decorative gravel. Spanish customs intervened and seized a further 459,000 packets of cigarettes.

Nine members of the OCG were arrested, including two Bulgarian citizens, with further seizures of 4,180 packs of cigarettes, cash, vehicles, mobile phones and hardware. The ensuing investigations revealed that a third exchange had already been initiated; the container was intercepted and an additional 457,200 packs of cigarettes seized.

In total, almost 1.4 million packs of cigarettes were seized and prevented from reaching the illicit tobacco market in Spain.

Source: Tax Agency, 'La Agencia Tributaria Desmantela una Trama Internacional de Contrabando Tras la Aprehesión de 1,4 millones de Cajetillas de Tabaco' ['The Tax Agency Dismantles an International Smuggling Plot Following the Seizure of 1.4 million Packs of Tobacco'], 26 December 2013.

Air travel is also still exploited as a means of smuggling products into Spain, with activity at the airports of Seville, Santiago de Compostela, Valencia and Málaga disrupted in recent years.⁷ Products entering through this route are principally illicit whites from Russia and Ukraine.⁸

Illegal Production Factories

As previously noted, in addition to being exploited as a transit hub and destination market, a recent trend has been the emergence of production activities, making Spain a source country for illicit tobacco products. From 2013 onwards, a number of illicit factories have been uncovered and dismantled by law enforcement. It was suggested to the researchers that one of the key factors behind this development was the benefit of moving manufacture closer to the point of sale, thereby substantially limiting the risks inherent in transporting illicit goods.

While it is usually Spanish citizens who are involved in illicit production, the activity is often controlled by – or at least conducted in cooperation with – an OCG in Eastern Europe. Raw tobacco leaf is also sourced from this region, despite substantial volumes being grown in Spain. There had been concerns that reduction of EU subsidies would make Spanish growers vulnerable to exploitation by organised criminals; however, this is not supported by the available evidence.

The case studies examined and the researchers' interviews with local officials consistently revealed specific action taken by OCGs to conceal and protect their activities. These ranged from disguising factories within farm buildings (see Box 5), to insisting that workers live inside the premises, locking the external doors and installing devices to block their mobile phone signals (see Box 6).

Box 5: Case Study – Operation *Cortafuegos*, Disguising Illicit Factories.

In late 2014, the Civil Guard dismantled an OCG producing illicit cigarettes in the province of Seville. The OCG had taken various measures to protect its operations: it concealed the illicit factory within farm buildings and installed electronic security devices; it regularly changed mobile phones; and used clean cars to test routes and uncover any police checkpoints.

The OCG had a clear structure, with specific roles assigned to each individual. Of the twelve members, nine were Spanish nationals, two were Greek and one was Colombian. Its illegal activity was not restricted to the production of illicit tobacco; some had previous convictions for dealing illicit narcotics, and some were owners of 'shadow companies' suspected of being used to launder funds.

During the investigation the Civil Guard seized 4,500 packets of counterfeit 'American Legend' cigarettes, with an estimated value of almost €270,000. Including the equipment, vehicles and electronics seized, the total value was more than €5 million.

Source: Information provided to the author by the Civil Guard.

7. *Ibid.*, p. 259.

8. *Ibid.*

Box 6: Case Study – Restricting Freedom of Workers in Illicit Factories.

In late 2014, the National Police received intelligence from its Bulgarian counterparts regarding an OCG operating in Spain, covertly transporting tobacco leaves and machinery from Bulgaria to illicit factories in Spain.

The ensuing investigation uncovered three premises in the provinces of Málaga, Toledo and Salamanca being used as factories. Production runs were carried out once every two months, and the OCG undertook extensive measures to conceal its activities. It insisted that workers live and sleep on the premises during this time to limit opportunities for detection by the authorities. The factories were therefore equipped with beds, showers and a common area with a kitchen and dining room. The outer doors were locked from the outside, the windows covered and one factory even had devices to inhibit mobile phone signals. Each premise was also equipped with security cameras and soundproofing to conceal the noise of the machinery.

The production capacity in each of the three factories was estimated to be in excess of 11 million cigarettes a week.

An operation to dismantle the network in July 2016 led to the arrest of 22 people, 20 of them Bulgarians and two Spaniards. Almost 40 tonnes of chopped tobacco were seized, alongside 260,656 completed packs of cigarettes, 207,000 loose cigarettes, various machinery and packaging with health messages for different countries. The tobacco products seized had an estimated value of €7.1 million.

Source: Tax Agency, 'Three Secret Tobacco Factories Dismantled and 39 Tons of Contraband Tobacco Seized', 11 July 2016.

To transport completed products, a regular technique encountered was the use of clean cars to travel ahead of those containing the illicit goods, testing routes to uncover any police checkpoints. This same technique is also used by OCGs who have smuggled completed products into the country, adopting this precautionary measure for their journeys within Spain.

Distribution

As will be discussed in Chapter IV, the tobacco market in Spain is tightly regulated. Controlled and monitored by the Tobacco Market Commissioner, manufacturers can sell only to registered distributors, who in turn may sell only to registered tobacconists. Local experts indicated that this system has proved effective at severely limiting infiltration of the legal supply chain. Instead, illicit tobacco is sold through newspaper kiosks, small local stores or by street vendors.

A notable emerging trend reported to the researchers is the sale of products direct from private homes; customers are either invited inside or simply served through an open window. This method has rapidly gained popularity due to the challenges it poses for law enforcement

officers in obtaining search warrants. According to local experts, the rights attached to a citizen's private home have consistently been given primacy, prevailing over the protection of state tax interests. To date, such activity has principally been noted in Andalusia (see Box 7); however, given the evident protections it offers against law enforcement activity, its use can perhaps be expected to grow.

Box 7: Case Study – Operations *Picado* and *Picado II*, Selling from Private Homes and Over the Internet.

Following reports from tobacconists of an unexplained 30% drop in sales in the province of Jaén in Andalusia, Spanish Customs and the Civil Guard launched an investigation. Initial enquiries led to a company claiming to be a wholesaler of untreated tobacco leaves; sold in that format, they would fall outside the control of the health, tax and tobacco market authorities. However, the company had also imported tobacco-cutting machinery from the US, which was incongruous with this role.

It was discovered that the company was actually selling processed tobacco illegally from private homes and over the internet, with delivery by courier. Although the website had a Spanish domain, it was hosted on a server in Bangladesh. The tobacco was purchased from within Spain, in addition to Poland and Bangladesh.

In November 2015, 41 tonnes of bulk tobacco were seized, enough to produce 4 million packs of cigarettes with a market value of €6.6 million.

This operation was followed by *Picado II* in March 2016, when once again the Tobacconists' Association of Jaén reported a substantial decrease in sales. The same modus operandi was uncovered: a company claiming to sell untreated tobacco leaves was actually distributing processed tobacco.

Operating from industrial premises in Almería, the group purchased raw tobacco from domestic producers, in addition to imports from Poland, Estonia and Bulgaria. Once again the website server was hosted overseas, this time in France. Internet purchases were delivered by courier, with videos on the website providing instructions for customers on rolling cigarettes.

A further 88 tonnes of bulk tobacco were seized, with a market value of €14 million. In addition to the loose tobacco, the authorities also seized eleven shredding machines, five tubing machines, four weighing machines and flavourings to simulate specific tobacco brands.

Source: Tax Agency, '41 Tonnes of Tobacco Seized in a Large Police Operation Against the Illegal Manufacture and Sale of Smoking Tobacco', 27 November 2015; Tax Agency, '88 Tonnes of Tobacco Were Confiscated in Andalusia in the Largest Seizure of Loose Tobacco Made in Spain', 11 March 2016; Antonio J Mora, 'Intervenidas Más de 88 Toneladas de Picadura de Tabaco' ['More Than 88 Tons of Fine-Cut Tobacco Confiscated'], El País, 11 March 2016.

Recent investigations have also uncovered illicit tobacco products being sold over the internet. Sold openly on the visible web,⁹ such websites have claimed to be trading legally in an attempt to avoid law enforcement attention, as is illustrated in Box 8. This is a concerning trend due to the inherent difficulties in tracing those behind websites, and the high volumes of potential customers that can be reached online.

Box 8: Case Study – Operation *Robust*, Selling Online.

In January 2016, it was discovered that a website claiming to legally sell tobacco leaf was actually distributing illicit tobacco products that should have been subject to taxation. This prompted a joint investigation by the Spanish Customs and Civil Guard.

The organised crime group identified as being behind the operation included both Polish and Spanish nationals, aged between 22 and 60 years old. In September 2016, industrial properties were raided in Valencia and Badajoz, where 100 tonnes of tobacco were discovered; at the time of writing, this was therefore the largest seizure of loose tobacco in Spain, valued at €16 million. Heavy machinery for drying the tobacco and a large number of machines for the manufacture of tobacco products were also seized, in addition to three cars, two vans, one motorcycle, and chemical products used to improve the aroma or flavour of the tobacco.

Alongside offences against the Public Treasury, those involved have been charged with belonging to a criminal organisation.

Source: Tax Agency, '100 Tonnes of Tobacco Confiscated in Valencia and Badajoz in the Largest Seizure of Loose Tobacco Made in Spain', 29 September 2016.

Organised Crime and Illicit Alcohol

There are two principal ways in which OCGs are most likely to be involved in the illicit alcohol trade: the first is smuggling genuine products without paying the required excise duty; the second is the production of illicit or counterfeit alcohol products, often using denatured ethyl alcohol that was not intended for human consumption.

Smuggling and Duty Evasion

Missing trader intra-community fraud is a complex form of criminal enterprise in which an OCG defrauds governments of duties and/or VAT. An example would be an illicit trader selling goods to another illicit trader, who in turn sells it on, and so forth. The first trader defaults on the VAT payments that are due to the relevant national tax authority. The subsequent traders

9. The visible web is the openly accessible part of the internet, where conventional search engines and major retailers operate. A distinction is made between the visible web and the dark web, the latter is hidden from conventional search engines using encryption and its sites are accessible only to those using similarly encrypted browsers.

then falsely reclaim the VAT on goods which they continually import and export to and from other EU states (as they are sent round and round across numerous EU borders, the activity has also become known as ‘carousel fraud’). Similarly, the OCGs involved in this form of illicit trade take advantage of vulnerabilities in the ‘bonded warehouse’ system, which allows them to manipulate the stock records or create duplicate loads (see Box 9).¹⁰

Box 9: Case Study – Operation *Gorpros Blanco*, Bonded Warehouse.

In May 2016, the Civil Guard and Customs Agency announced the disruption of a criminal group which they claimed had defrauded the Public Treasury of more than €3.7 million.

The modus operandi of the group had been to purchase alcohol products in another EU country – usually the Netherlands and Portugal – and store them in bonded warehouses, before selling them to distributors and retailers without payment of the required VAT.

Ten people have been arrested thus far, with charges including offences against the Public Treasury, and for belonging to a criminal organisation.

Source: Civil Guard, ‘La Agencia Tributaria y la Guardia Civil Desarticulan un Entramado en el Sector de las Bebidas Alcohólicas Orientado a la Defraudación del IVA’ [‘The Tax Agency and the Civil Guard Undermine Alcoholic Drinks VAT Fraud Network’], 2 May 2016.

Manufacture in Illicit Factories

Alternatively, OCGs produce counterfeit or simply unlicensed products using industrial ethanol (a type of alcohol) that was never intended for human consumption. Industrial ethanol has a number of legitimate applications, from household cleaning products to decontamination sprays. In contrast to alcohol intended for drinks production, it is exempt from excise duty within the EU, which unintentionally creates opportunities for OCGs to make substantial profits if it is used to produce illicit wines or spirits. To prevent such exploitation of this system, and ultimately protect consumers, there are both national and EU regulations that require industrial ethanol alcohol to be ‘denatured’, that is, rendered undrinkable through the addition of foul-tasting or foul-smelling chemicals. A blue or purple dye is often also added so that the product can be immediately distinguished.

However, OCGs can take steps to filter out and remove these denaturants, for example using diatomaceous earth or simply adding forms of bleach. The resultant products are potentially

10. European rules on excise holding and movement allow payment of duty on goods to be ‘suspended’ while they circulate between registered warehouses in the EU, known as ‘bonded warehouses’. These are designed to benefit traders who import goods, offering a facility that delays duty and/or import VAT payments until traders are ready for the goods to come out of ‘duty suspense’, entering free circulation or the customs procedure of another EU member state.

extremely harmful, due to the nature of the alcohol used and the often unsanitary production facilitates. Moreover, there have also been instances of methanol industrial alcohol being used in error; highly toxic once metabolised by the human body, methanol poisoning from illicit drinking alcohol can cause blindness and death, as was highlighted in the Czech Republic in 2012 when dozens of people were killed and many more suffered permanent health damage.¹¹

The illicit alcohol products are sold as either counterfeits of genuine brands or simply unlabelled. There is evidence of both activities by OCGs in Spain. Their methods and scale of production are illustrated by the case studies in Boxes 10 and 11, where significant factories were uncovered and dismantled.

Box 10: Case Study – Operation *Resaca*, Illicit Factories.

In June 2015, the Civil Guard announced that it had raided an illicit alcohol factory, seizing 41,000 litres of wine and 200 litres of spirits.

Officers had first identified the counterfeit wine for sale at fairs in Cadiz, becoming suspicious due to its unusually low price. Tracing the supply chain, they uncovered a large but crude factory producing illicit alcohol in repurposed plastic containers and illegally claiming it to be an established brand.

Source: *Civil Guard, 'La Guardia Civil Interviene 41.000 Litros de Vinos con Denominación de Origen Falsificados y Cerca de 200 litros de Alcoholes y Esencias'* [*Civil Guard Seizes 41,000 Litres of Illicit Wine and 200 Litres of Spirits'*], 24 June 2016.

Box 11: Case Study – Illicit Factories.

In November 2014, the National Police, working in cooperation with the Portuguese National Republican Guard, dismantled a network that was producing and distributing illicit alcohol across Galicia, northwest Spain. The group comprised Spanish and Portuguese citizens who had established an illegal distillery in Coimbra, Portugal, using large, repurposed plastic containers in unsanitary conditions. They produced both counterfeit and unlabelled alcohol, which were transported to the provinces of Ourense and Pontevedra in Galicia, where they were distributed for sale.

In addition to the distillery, the authorities raided eleven properties in Spain and 30 in Portugal, seizing 65,000 litres of ethyl alcohol, €350,000 in cash, nineteen firearms and 21 vehicles.

Source: *Spanish National Police, 'Desarticulada una Red Que Elaboraba y Distribuía Aguardientes sin Ningún Tipo de Control Sanitario ni Fiscal'* [*Network that Produces and Distributes Spirits without Health or Tax Controls Dismantled'*], 5 November 2014.

11. Sergey Zakharov et al., 'Czech Mass Methanol Outbreak 2012: Epidemiology, Challenges and Clinical Features', *Clinical Toxicology* (Vol. 52, No. 10, 2014), pp. 1,013–24.

Organised Crime and Illicit Pharmaceuticals

A comprehensive review by Interpol established OCG involvement in the global illicit pharmaceuticals trade, both in the form of hierarchical groups and smaller, more informal networks.¹² Interviews with local experts further confirmed their involvement in Spain, although some activity is also conducted by opportunistic individuals.

As outlined in Chapter II, Spain is primarily a source country for illicit pharmaceutical products, and OCG activity relates to two distinct issues: first, genuine products being sold through parallel trade in more lucrative markets; and second, the manufacture of illicit and counterfeit products in unlicensed and often crude laboratories.

Parallel Trade

The term ‘parallel trade’ refers to the practice in the EU of trading pharmaceutical products that are bought cheaply in one part of Europe and sold in another part of the continent at higher prices. It is legal, but the system is vulnerable to abuse as products are allowed to be repackaged so that health warnings appear in the correct language. This accepted practice of breaching manufacturer seals therefore creates an opportunity for criminals to infiltrate the legitimate supply chain, for example, through inserting illicit products into genuine packaging.

Abuse of the parallel trade system was not identified as a threat to the Spanish population, with the domestic supply chain tightly controlled, making infiltration difficult, and the low prices of legal products reducing both the consumer demand for illicit pharmaceuticals and the potential profits to be made. However, it was acknowledged that the low prices make Spain vulnerable to exploitation as a source country, with goods diverted to more lucrative markets elsewhere in Europe.

Manufacture in Illicit Laboratories

Despite offering a limited consumer market, case studies suggest that Spain provides a relatively attractive location from which to produce illicit pharmaceutical products. Interviews with local experts indicated that this was due to a combination of its geographic position and the limited perceived risk in the case of detection, with low criminal penalties and, in particular, limited success in recovering criminal profits.

Illicit ‘laboratories’, far from being vast, sterile rooms with sophisticated equipment, are in fact often housed in apartments, houses or garages, with crude, out-dated and unsanitary equipment.

Interviews with officials confirmed that active ingredients are sourced from various countries – including China, India and Turkey – and, due to their size, may be easily imported via the postal

12. Interpol, ‘Pharmaceutical Crime and Organized Criminal Groups: An Analysis of the Involvement of Organized Criminal Groups in Pharmaceutical Crime since 2008’, July 2014; OECD, *Illicit Trade*, p. 104.

system. They are then used to produce either illicit, generic brand products or counterfeits of known products. It was noted, however, that OCGs often carefully avoid infringing registered trademarks in order to reduce the number of potential criminal charges they might face, if arrested, and forestall additional legal action by the industry. Products therefore often appear similar to known brands, while remaining sufficiently distinct to avoid legal action.

Officials reported that, within Spain, the illicit pharmaceuticals trade almost entirely consists of lifestyle drugs, specifically for erectile dysfunction, weight loss and muscle gain. The prevalence of the latter means that gyms are a popular means of distribution, as illustrated through the case study in Box 12.

Box 12: Case Study – Operation *Músculo*, Distribution of Anabolic Steroids Through Gyms.

In November 2015, a bodybuilder died after taking anabolic steroids. The ensuing investigation into the source of the illicit pharmaceuticals uncovered an OCG active across Spain, distributing anabolic steroids through gyms.

In June 2016, the investigation concluded with the arrest of six people in Albacete, Madrid, Murcia and Las Palmas, with 90,000 doses of illicit pharmaceuticals seized.

Source: Spanish National Police, 'La Policía Nacional Desarticula un Grupo Dedicado al Tráfico de Anabolizantes tras la Muerte de un Hombre en un Gimnasio de Albacete' ['The National Police Dismantle a Group Dedicated to Trafficking Anabolic Steroids after the Death of a Man in a Gym in Albacete'], 26 July 2016.

While distribution through gyms remains popular, a notable development highlighted to the researchers has been the increasing use of postal and fast-parcel systems, both for initially sourcing goods and for subsequently distributing them to consumers. This is linked to the significant growth in websites offering pharmaceutical products and the emergence of goods advertised for sale through social media. As in most EU countries, the use of internet-based services is a more substantial issue in relation to pharmaceuticals than other commodities. While the authorities have achieved some successes in removing websites hosted in Spain, dealing with those on foreign servers has proved challenging.

In addition to providing insight to OCG methods for producing and distributing illicit pharmaceuticals, Operation *Dedy!* also highlights the diversion of genuine products from the legal supply chain in order to be sold illegally (see Box 13). Unfortunately, there is limited public information on the prevalence or scale of similar activity.

Box 13: Case Study – Operation *Dedyl*, Producing and Distributing Illicit Pharmaceuticals.

In March 2015, an advert for medicinal substances was discovered on Facebook. The ensuing investigation uncovered an OCG of Bulgarian and Spanish nationals, which was distributing large quantities of anabolic steroids to amateur athletes throughout Spain.

Operating a clandestine factory in the city of Gandia, the active ingredients were principally sourced from Bulgaria, and either delivered by courier or collected by members of the OCG and transported across the border by car. Orders were made over the internet, with delivery by express courier services. Raids by the National Police also uncovered genuine products that had been diverted from legal channels, and counterfeit products from Portugal and Greece.

In total, 700 kg of illicit pharmaceutical products were seized, equivalent to 1.8 million doses. This seizure comprised 130 different products, including anabolic steroids, sexual stimulants and growth hormones. It was estimated that the group's quarterly profit from their illicit activities was more than €50,000.

Source: Information provided to the author by the Spanish National Police.

As highlighted by the case study in Box 14, and interviews with local officials, there is also evidence that some OCGs involved in the manufacture and sale of illicit pharmaceutical products are similarly involved in the distribution of narcotics, highlighting both the tendency of OCGs to adapt to opportunities in the market and the overlap between the illicit trade and more traditional forms of organised criminality.

Box 14: Case Study – Operation *Portogallo*, Distribution of Both Illicit Pharmaceuticals and Narcotics.

An anonymous report to the Spanish National Police led to the identification of an organised crime group distributing both illicit pharmaceutical products and illegal narcotics in Valladolid, northern Spain.

In June 2016, sixteen members of the group were arrested in Valladolid, Cabezón de Pisuegra, Pedrajas de San Esteban and Madrid, all of them Spanish nationals. The accompanying searches led to the seizure of 25,000 doses of anabolic steroids, 1.1 kg of cocaine, 10 grams of crystal methamphetamine, a number of marijuana plants and €42,000 in cash. In addition to various charges relating to the goods seized, they have been charged with membership of a criminal organisation.

Source: Spanish National Police, 'La Policía Nacional Desarticulada en Valladolid una Organización Dedicada al Tráfico de Sustancias Anabolizantes y Estupefacientes' ['The National Police Dismantle in Valladolid an Organisation Dedicated to Trafficking Anabolic Steroids and Narcotics'], 20 June 2016.

IV. Legislation, Law Enforcement Response and Sanctions

WHILE THE CHALLENGING economic conditions in Spain are likely to have influenced activity in illicit trade, there are few suggestions that they have reduced the resources available to law enforcement in its fight against it. The role of organised crime in this area is clearly acknowledged by the authorities and, as such, it is prioritised and resourced alongside other serious criminality. The work of the authorities is also supported by specific legislation proscribing activity in illicit trade and providing moderately strong sanctions. However, during interviews, frustration was expressed to the researchers at perceived inconsistencies in the application of sanctions by the judiciary. Similarly, while industry regulators were rightly praised for their proactive approach in protecting legal supply chains, it was highlighted that this approach has little impact preventing the sale of goods through illegal channels.

Regulation

The tobacco industry in Spain is tightly regulated: manufacturers can sell their products only to registered distributors, who in turn can sell only to registered tobacconists. Registration is controlled by the Tobacco Market Commissioner, which allocates a limited number of licences to each area, commensurate with local demand. The amount of tobacco entering the country and distributed to each region is therefore monitored and controlled in an attempt to prevent oversupply, thereby reducing the risk of Spanish products being illegally exported to other, more lucrative markets.

Sales through tobacconists are recorded and monitored, with strict penalties if they are found to be in breach of regulation or selling illicit products. Tobacconists are also required to report any unusual activity or excessive purchases to the commissioner for investigation. Training is provided and a minimum fine of €12,000 is a significant incentive to comply. However, it is unclear whether this procedure is effective, with no requirement to verify customer identity when their activity is deemed suspicious, or to refuse the sale.

The pharmaceutical market is subject to similarly tight regulation. Wholesalers and pharmacies must be registered with AEMPS, the pharmaceutical regulator, and are regularly subject to inspection. If they are found to be in breach of their licence, it can be revoked and criminal prosecution may follow if they are found to be involved in illicit trade.

Officials suggested that such tight regulation offers strong protection of the legal supply chain, largely preventing illicit goods from being sold through registered retailers. However, it should be noted that such regulation cannot prevent the supply of illicit goods through other means; the activity is therefore displaced rather than suppressed. While such regulation is

irrefutably beneficial, it must be accompanied by action to detect and disrupt activity outside the regulated sector.

Law Enforcement Response

Within law enforcement, the role of organised crime in the illicit trade is clearly acknowledged and, as such, it is prioritised alongside other serious criminality. Agencies deploy a range of powers to investigate the networks behind the illicit activity and have consequently developed a detailed intelligence picture and understanding of the nature of the threat. Overall, feedback from a variety of public and private sector stakeholders was therefore positive. Where issues were raised to the researchers, they centred on the same theme: coordination and cooperation.

Within Spain, there is considerable overlap between the powers and jurisdiction of the two principal law enforcement agencies, the National Police and Civil Guard, with both conducting investigations into organised crime and their activities in illicit trade. To maximise impact and ensure the effective use of investigative resources, coordination is therefore extremely important; however, it was suggested to the researchers that intelligence sharing remains limited. While a specific body has been established to improve coordination and deconflict investigations, it is unavoidably reliant on law enforcement proactively sharing information.

Therefore, while questions remain regarding cooperation between Spain's principal law enforcement agencies, crucially both appear to have strong and effective working relationships with partners such as Customs and AEMPS, the pharmaceutical regulator. Customs also has operational powers, including those for surveillance and investigation in relation to smuggling activities at sea, in Spain's air space or border areas. It works closely with the Civil Guard in particular, which has a specific role within customs areas.

Conversely, AEMPS has no investigative or enforcement role, but shares intelligence with the agencies and offers technical support and pharmaceutical expertise to both investigations and prosecutions. It has also taken a proactive role in tackling illicit trade, producing quadrennial national strategies outlining its key objectives and proposing detailed actions to achieve them. The most recent was published in April 2016, and included particular focus on illicit pharmaceutical products being sold over the internet, reflecting a sophisticated understanding of the evolving threat.¹ Cooperation with law enforcement is also a notable theme, and the importance attached to this area of its work was highlighted in interviews with various stakeholders.

Cooperation between law enforcement agencies and industry appears to be more irregular, with the latter principally providing assistance in assessing the authenticity of seized products. However, the relationship was described as a positive one, adding value to investigations. A number of companies also have personnel dedicated to counter-illicit trade activities. However, they work largely in parallel to the authorities, investigating the overall scale and scope of the illicit trade rather than working together at an operational level. Although direct interaction

1. Agencia Española de Medicamentos y Productos Sanitarios [Spanish Agency of Medicines and Medical Devices], 'Estrategia frente a Medicamentos Falsificados 2016-2019' ['Strategy against Falsified Medicines 2016-2019'], 11 April 2016.

with industry was therefore limited in scope, it was noteworthy that law enforcement integrated private sector data and analysis regarding the scale of the threat alongside their own seizure and operational data.

The international nature of illicit trade, and the cross-border activity of the organised crime networks behind it, also necessitates cooperation beyond Spanish borders. While there are indications that coordination between Spanish and Gibraltar authorities has improved in recent years, the ongoing dispute over the sovereignty of the British territory unavoidably limits possibilities for cooperation. This is evident at both the strategic and operational level. More generally, however, cooperation between the Spanish authorities and their international counterparts (including the UK) was cited as a considerable strength and it is notable that international partners feature in many of the cases examined.

Overall, it was suggested that weaknesses in the fight against organised crime and illicit trade relate more to vulnerabilities in the prosecution of cases rather than in their investigation.

Legislation and Sanctions

Mirroring other European jurisdictions, there was a general consensus among representatives from both the public and private sectors that current sanctions are insufficient and do not act as an effective deterrent. The same individuals and OCGs are often seen returning to illicit trade following prosecution or civil action, seemingly undeterred by the sanctions previously imposed. Moreover, upon resuming their illegal activities, they do so with greater knowledge of law enforcement methods and capabilities, adapting in response and therefore becoming an increasingly difficult target for subsequent investigations.

It was suggested that the issue lies not in the strength of the sanctions available, but in their application by the judiciary, with enforcement described as often lenient. A review of Spanish criminal law confirms that moderately strong penalties are available. Organic Law 12/1995 of 12 December 1995 for the Repression of Smuggling, as modified by Organic Law 6/2011 of 30 June 2011, provides that smuggling tobacco products can be treated as either a criminal or an administrative offence, dependent on the value of the goods and whether the activity was conducted as part of a criminal organisation. When prosecuted as a criminal offence, a penalty of up to five years' imprisonment may be imposed, in addition to a fine of up to six times the value of the goods and confiscation of the products. The law therefore provides the means for moderately substantial penalties in both custodial and financial terms. However, in 2015, only 22% of those convicted under this Organic Law received prison sentences; moreover, 82% of those sentences were for two years of imprisonment or less.²

The production, smuggling or distribution of illicit tobacco or alcohol products may also infringe tax legislation. Article 305 bis of the Criminal Code, added by Organic Law 7/2012 of

2. These statistics relate to all convictions under this Organic Law, not just those in relation to tobacco products. Instituto Nacional de Estadística [National Institute of Statistics], 'Conviction Statistics: Adults. Year 2015', retrieved 15 December 2016.

27 December 2012, provides that the members of a criminal organisation committing tax fraud may receive prison sentences of between two to six years, and a fine up to six times the amount of tax evaded. Where tax stamps are forged, Article 389 of the Criminal Code, as modified by Organic Law 1/2015 of 30 March 2015, states that a penalty of between six months and three years' imprisonment may be imposed.

Intellectual property law also includes provisions relevant to the illicit trade in tobacco and alcohol. Article 274.1 of the Criminal Code, as modified by Organic Law 1/2015 of 30 March 2015, states that a penalty of between one and four years' imprisonment may be imposed where products are manufactured, imported or distributed in bulk, and include a registered trademark (or a distinctive symbol that could be mistaken for it). Article 276 of the Criminal Code, also modified by Organic Law 1/2015 of 30 March 2015, further increases the potential penalty to between two and six years' imprisonment where the perpetrators belong to a criminal organisation.

There are specific provisions relating to the illicit production or supply of pharmaceutical products. Articles 361 and 362 of the Criminal Code, as amended by Organic Law 1/2015 of 30 March 2015, provide penalties of up to three years' imprisonment and a fine for activities relating to the manufacture, import, export, supply, storage or sale of illicit pharmaceutical products, and up to four years' imprisonment for counterfeiting pharmaceutical products or their accompanying documentation. Moreover, the code prescribes that the higher penalties must be imposed when the guilty party is from the medical profession, part of a criminal organisation or has offered the products for sale on a substantial scale. While it can be argued that higher penalties could be justified, these sanctions are not unduly lenient and offer the possibility of substantial sentences.

However, the code specifies that the illicit pharmaceutical products must have caused a risk to life or health, which can present challenges for prosecutors. Where genuine products are smuggled, they retain their medicinal properties and defence lawyers can argue that they continue to help, rather than injure, the health of the recipients. Similarly, where counterfeit or illicit products contain lower – or no – active ingredients, they are often chemically harmless. While prosecutors can argue that patients would suffer through the product's failure to treat their ailment, this can be extremely challenging in the case of lifestyle products, which represent the majority of illicit pharmaceuticals in Spain. During interviews, it was further highlighted that the preparatory act of importing active ingredients is normally treated as an administrative offence, rather than under these specific provisions.

Finally, additional penalties may also be imposed for membership of a criminal organisation: Article 570 bis of the Criminal Code, as modified by Organic Law 1/2015 of 30 March 2015, provides potential prison sentences of between three and six years for those who 'promote, organise, coordinate or direct' a criminal organisation, and one to three years for more junior members. Where serious crime was intended or committed, these sentences further increase, becoming four to eight and two to five years' imprisonment respectively.

The law therefore appears to recognise illicit trade in tobacco, alcohol and pharmaceutical products as serious criminal activity, offering moderately substantial penalties and including specific provisions to ensure higher sentences where the activity is linked to organised crime. While a case could be made for judicial reform to address some of the issues outlined above, there is perhaps a more pressing argument for ensuring that prosecutors and the judiciary utilise existing laws effectively so that criminal sanction acts as a more successful deterrent. Indeed, it is notable that AEMPS's 2016–19 national strategy document proposes specific action to conduct training and awareness raising with judges, magistrates and prosecutors in relation to the risks posed by illicit pharmaceutical products.³

3. Spanish Agency of Medicines and Medical Devices, *Estrategia frente a Medicamentos Falsificados 2016-2019*.

V. Analysis

THE CRIMINAL NETWORKS behind Spain's illicit trade are sophisticated, quick to adapt and often active in other areas of criminality. The sophistication of their activities was repeatedly highlighted during interviews and is evident in the case studies detailed in Chapter III. OCGs were seen to interchange the registration details of containers in transit, remove denaturants from industrial alcohol and take extensive action to protect and conceal their activities. This ranged from conducting test runs to uncover police checkpoints before transporting goods, to insisting that workers live inside the premises of illicit factories, locking the external doors and installing devices to block their mobile phone signals. OCGs in Spain were also found to be working in collaboration with networks overseas, further increasing the expertise and experience upon which they can draw.

The sophistication of their activities also demonstrates adaptability, with methods evolving in response to law enforcement tactics. This adaptability also extends beyond defensive activity. OCGs are quick to recognise and respond to market conditions, moving between product types as opportunities arise, while using the same routes, smuggling methods and distribution channels. While individuals may have expertise in one area, within larger groups there is evidence that more senior members may oversee and direct activity in multiple domains.

In contrast to other countries studied, no evidence was found of a decisive shift away from the established high-risk activities of organised crime (such as trafficking narcotics) towards illicit trade, which is considered comparatively low-risk both in terms of detection and potential sanctions. Instead, OCGs in Spain are often involved in both forms of activity, with groups moving between different commodities within illicit trade and between crime types. This flexibility was emphasised during fieldwork interviews and is illustrated in the case studies. Operation *Portogallo* (Box 14) describes the disruption of an OCG distributing cocaine, marijuana and crystal methamphetamine alongside illicit pharmaceuticals, while the case study outlined in Box 11 details an extensive firearms seizure from an OCG producing illicit alcohol.

Examination of the distribution methods for illicit tobacco and pharmaceutical products uncovered through this research and outlined in the case studies above indicates limited infiltration of legal supply chains; stringent regulatory systems appear to offer strong protection, largely preventing illicit goods from being sold through registered retailers. However, such goods remain readily available from a variety of sources, suggesting that measures have displaced rather than suppressed the sale of illicit products.

In contrast with the detailed information regarding the nature of the threat, there were inconsistencies in the information available to measure its scale, both in relation to different products and with regard to the prevalence of different criminal methods. The data regarding illicit tobacco greatly exceed that in relation to illicit alcohol or pharmaceuticals, offering

measurements of overall scale alongside trend analysis and detailed breakdowns. There is a similar inconsistency in the information regarding entry points into the country, making it difficult to assess the comparative scale of the threat from different criminal methods, with data availability influencing, and potentially distorting, perceptions of the threat picture. This makes trend analysis more challenging, and potentially hampers effective prioritisation of law enforcement activity.

Drivers of Illicit Trade in Spain

One obvious enabler of the illicit trade in mainland Spain is the country's geography. Situated at the southern tip of Europe, there is only a short stretch of water that separates Spain from known smuggling hubs in North Africa. Together with its long coastline, it is easy to understand why Spain has long been an attractive country for exploitation by smugglers trying to reach Europe. Alongside this enabling factor, there are four specific drivers behind Spain's role as a source country, transit hub and destination market for different products.

The first is price differentials, which create the opportunity for substantial profits from smuggled tobacco products. The low price of tobacco available across land borders with Gibraltar and Andorra, and in the autonomous community of the Canary Islands, in part drives Spain's role as a destination market. Similarly, the existence of nearby European countries with even higher prices drives its position as a transit country, with many products subsequently transported onwards to more lucrative markets such as France and the UK.

The second driver is the Spanish economy and, specifically, the impact of the global financial crisis. As discussed above, the effects in Spain were extensive and widespread, with household disposable income falling at one of the highest rates among OECD countries.¹ Reduced income increases demand for cheaper alternatives, which can include those from illicit sources; it is therefore feasible that this has acted as a driving factor for the growth in demand for illicit goods. Similarly, unemployment rose rapidly, above EU averages, reaching a peak of 26.1% in 2013 (see Figure 2). This was particularly acute in southern Spain, where unemployment reached 36.2% the same year; although the figures have now begun to fall, in 2015 they remained at 31.5% in this region and at 22.1% nationally.² Such pervasive unemployment can increase the risk of being drawn into criminal activities. Moreover, this vulnerability is particularly acute in a region with multiple entry points for illicit trade, such as the land border with Gibraltar and the major port of Algeciras, offering substantial opportunities for those willing to enter into criminality.

This is linked to the third driver: social acceptance. In many cases, activities relating to illicit trade are not seen as a crime and links to organised crime are rarely considered. Research has shown that people in Spain are often quick to excuse involvement in illicit trade, believing it to be out of necessity and blaming limited employment opportunities following the economic

1. OECD, 'Country Snapshot: Spain'.

2. Eurostat, 'Unemployment Rates by Sex, Age and NUTS 2 Regions', 2016, <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfst_r_lfu3rt&lang=en>, accessed 10 October 2016.

crisis.³ This substantially lowers the psychological barriers for entry into illicit trade, removing the social stigma that is attached to other areas of criminality. Moreover, it increases the size of the market, with more people willing to purchase through such routes.

Finally, the fourth driver is the relatively lenient sanctions against those convicted of crimes relating to illicit trade. While the law appears to recognise illicit trade as serious criminal activity, the application of sanctions appears to be inconsistent, with relatively low penalties often applied as outlined above. This contributes to the popular perception that illicit trade is not a serious crime. Moreover, the lower penalties reduce the associated risk which, when considered against the significant profits available, therefore fails to deter either new entrants or repeat offenders.

It is the combination of these factors that have simultaneously created demand for illicit products, fuelled their supply, and offered limited deterrence for participation in this form of criminality.

Key Findings

1. Inconsistencies in the amount and depth of information available in relation to different products and smuggling methods make it difficult to assess the comparative scale of the threat, with data availability influencing, and potentially distorting, perceptions of the threat landscape. This makes trend analysis more challenging and potentially hampers effective prioritisation of law enforcement activity.
2. OCGs are quick to recognise and respond to market conditions, moving between product types as opportunities arise, while using the same routes, smuggling methods and distribution channels. Their activities are also not restricted to illicit trade, often encompassing other forms of criminality, such as trafficking narcotics. The networked nature of larger groups means they have the flexibility to remain active in multiple crime types simultaneously, moving between them with relative ease. There is little evidence of a distinct shift away from the established high-risk activities of organised crime and towards illicit trade.
3. The role of OCGs in illicit trade is clearly acknowledged by Spanish authorities and, as such, it is prioritised alongside other serious criminality and authorities take a proactive approach in response. However, while law enforcement agencies have demonstrated successes in disrupting the networks involved, the current application and enforcement of criminal penalties do not provide an effective deterrent, especially when considered against the potential profits available. There is therefore a level of persistence among those involved, with individuals and OCGs frequently returning to their activities following prosecution or civil action, armed with greater knowledge of law enforcement methods and capabilities.
4. There is a high degree of social acceptance for illicit trade within Spain. People are often quick to excuse involvement, believing it to be out of necessity, and blaming limited

3. ThinkCom.es, 'Estudio Sobre El Consumo de Tabaco Y Alcohol En España', cited in Calderoni et al., *The Factbook on the Illicit Trade in Tobacco Products 7*, p. 86.

employment opportunities following the economic crisis. This eliminates the social stigma that is attached to other forms of criminality, removing a key psychological barrier to involvement in this particular crime.

5. Tight regulation of the tobacco and pharmaceutical markets provides strong protection of the legal supply chain, which is rarely infiltrated by illicit goods. However, such measures cannot prevent the supply of goods through illegal channels, effectively displacing rather than preventing illicit trade. While sale by vendors on the street remains popular, illicit goods are increasingly being sold through websites and on social media, and sale from private homes is an emerging trend.

About the Author

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Prior to joining the institute she worked in the criminal justice sector, first in criminal defence and later in the police. Clare holds an MSc with Distinction in Countering Organised Crime and Terrorism from University College London, where her dissertation examined the spatial and temporal distribution of terrorism incidents within post-accord Northern Ireland. She has also studied at the University of Newcastle and the Université Lumière Lyon 2, holding a Bachelor's degree in Law with French.